

**RESOLUTION NO. 2015-30**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, SELECTING THE PROPOSAL OF SOUTHERN WASTE SYSTEMS, LLC FOR SOLID WASTE AND RECYCLING SERVICES TO THE VILLAGE; AUTHORIZING THE VILLAGE MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT FOR COLLECTION, TRANSPORTATION, AND DISPOSAL OF SOLID WASTE AND RECYCLING SERVICES; AUTHORIZING IMPLEMENTATION OF THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Village of Key Biscayne (the "Village") provides for solid waste collection and recycling services to be provided to residential customers within the Village (the "Services"); and

**WHEREAS**, the Village solicited proposals from qualified prospective contractors for the Services in Request for Proposals No. PW-2015-1 ("RFP") issued on April 20, 2015; and

**WHEREAS**, pursuant to the RFP competitive selection process, four proposals were received by the Village, and after review and evaluation of the proposals submitted, the Village Manager recommends Southern Waste Systems, LLC ("Contractor") be selected to perform the Services; and

**WHEREAS**, the Village Council wishes to select the Contractor for the Services, and authorizes the Village Manager to negotiate and execute an Agreement for Collection, Transportation and Disposal of Solid Waste and Recycling Services (the "Agreement"), in substantially the form of Agreement attached hereto as Exhibit "A"; and

**WHEREAS**, the Village Council finds that it is in the best interests of the Village to select and authorize award of the Agreement to Contractor, and proceed as indicated in this Resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

**Section 2. Selection of Proposer and Award of Agreement.** The Village Council hereby selects the Contractor for the Services and award of the Agreement.

**Section 3. Agreement Approved; Village Manager Authorized.** That the Agreement, in substantially the form attached hereto as Exhibit "A", is hereby approved, and the Village Manager is hereby authorized to negotiate and execute the Agreement, subject to approval as to form, content and legal sufficiency by the Village Attorney.

**Section 4. Implementation.** That the Village Manager is hereby authorized to take any and all action necessary to implement the terms and conditions of the Agreement and this Resolution.

**Section 5. Effective Date.** That this Resolution shall take effect immediately upon adoption hereof.

PASSED AND ADOPTED this 23rd day of June, 2015.

ATTEST:



CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

  
MAYOR MAYRA PEÑA LINDSAY

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

  
VILLAGE ATTORNEY



**AGREEMENT**  
**FOR**  
**COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE AND**  
**RECYCLING SERVICES**  
**FOR THE RESIDENTIAL AREAS OF KEY BISCAYNE, FLORIDA**  
**BETWEEN**  
**THE VILLAGE OF KEY BISCAYNE**  
**AND**  
**CONTRACTOR**

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## AGREEMENT

This Agreement for the Collection, Transportation, and Disposal of Residential Solid Waste and Recycling Services (the or this "Agreement") is made and entered into as of this \_\_\_\_ day of September, 2015, by and between **SOUTHERN WASTE SYSTEMS, LLC**, a Florida limited liability company ("Contractor"), and the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation (the "Village").

### Recitals

**Whereas**, the Village's existing agreement for the provision of solid waste collection and recycling services to residential customers expires on September 30, 2015; and

**Whereas**, pursuant to applicable provisions of the Village Code and other legislative authority, on April 20, 2015, the Village issued Request for Proposals (RFP) No. PW-2015-1 competitively soliciting and procuring proposals from qualified Prospective Contractors for the collection, transportation and disposal of solid waste and recycling services; and

**Whereas**, the Contractor submitted a proposal in response to the RFP, and after evaluation and recommendation by the Village Manager, the Contractor was selected and awarded this Agreement by the Village Council; and

**Whereas**, the terms and conditions of the RFP and the Contractor's proposal are herein incorporated and made a part of this Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, it is agreed as follows:

#### 1. Definition of Terms.

- 1.1 **Contractor** Shall mean Southern Waste Systems, LLC, a Florida limited liability company
- 1.2 **Biohazardous Waste** Shall mean any Solid Waste which may present a threat of infection to humans. The term includes, but is not limited to, non-liquid human tissue and body parts, laboratory and veterinary waste which contains human disease-causing agents, used disposable sharps, human blood, and human blood products and body fluids, and other materials which represent a significant risk of infection to persons outside of the generating facility.
- 1.3 **Bulk Trash** Shall mean vegetative and non-vegetative material and large items of various types customary to ordinary residential housekeeping operations which due to their size cannot be placed in a Garbage Container or disposable bag. Bulk Trash shall not include automobiles and automotive components, internal combustion engines or Construction Debris. Bulk

Trash shall include White Goods, carpeting of any diameter if folded, tied, and rolled or bundled and cut in lengths of six feet or less. Bulk Trash shall not include A/C or water heater units.

- 1.4 Code** Shall mean the Code of the Village of Key Biscayne, Florida, as amended from time to time.
- 1.5 Collection Services** Shall mean, collectively, collection, transportation, and disposal services with respect to Solid Waste, including Garbage, Yard Trash, Recyclable Materials, Bulk Trash, and White Goods.
- 1.6 Collection Vehicles** Shall mean a boom truck, rear loader truck, roll-off truck, hybrid-hydraulic diesel trucks, or other vehicle used by Contractor to collect or transport Solid Waste or Recyclable Materials. Individually each is a Collection Vehicle.
- 1.7 Construction Debris** Shall mean materials generally not water soluble and non-hazardous in nature, including, but not limited to, steel, glass, brick, concrete or roofing material, pipe, gypsum wallboard, and lumber. Construction Debris shall include materials from the construction or destruction of a structure as part of a construction or demolition project, and including rocks, soils, stumps, and other vegetative matter which normally results from land clearing or land development operations for a construction or home improvement project.
- 1.8 County** Shall mean Miami-Dade County, Florida.
- 1.9 Day** Shall mean a calendar day.
- 1.10 Garbage** Shall mean every refuse accumulation of animal, fruit, vegetable or organic matter that attends the preparation, use, cooking and dealing in or storage of meats, fish, fowl, fruit or vegetables, and decay, putrefaction, and the generation of noxious or offensive gases or odors or which, during or after decay, may serve as breeding or feeding material for flies or other germ carrying insects.
- 1.11 Garbage Container** Shall mean a container made of durable plastic provided by Contractor for Garbage which shall be "Miami-Dade County green" and be a wheeled receptacle with a capacity of 95-96 gallons intended to be manually or mechanically dumped into a loader-packer type collection truck. Such



container shall have overlapping lips for rain protection with a 270 degree lip opening. The handles shall be at least 2"x5" for easy gripping. The carts shall be of at least 0.175" or greater wall thickness with one piece high-density polyethylene (HDPE) construction. The wheels shall be a minimum of 10" and have maintenance-free bearings. Each garbage container shall be hot-stamped (or a decal may be provided in lieu thereof) with the cart identification number, the Village Seal and any other information as approved by the Village.

- 1.12 Hazardous Waste** Shall mean any materials defined as hazardous waste or hazardous materials under any applicable laws, rules or regulations.
- 1.13 Holidays** Shall mean collectively Independence Day, Thanksgiving Day and Christmas Day. Individually each is a Holiday.
- 1.14 Other Collections** Shall mean collectively emergency collections, requested Holiday collections, and special pickups.
- 1.15 Pickup Point** Shall mean a location designated by each Residential Customer at curbside or sideyard to which Contractor has unobstructed, safe access at the time of collection.
- 1.16 Prohibited Waste** Shall mean any Hazardous Waste, Biohazardous Waste or Special Waste. Nothing herein shall be construed to require Contractor to pick up Prohibited Waste.
- 1.17 Recyclable Materials** Shall mean those materials which are capable of being recycled and which would otherwise be processed or disposed of as Solid Waste such as:
- a newspapers, including the normal percentage of rotogravure and colored sections. Phone books, magazines, and any paper other than newspaper are not acceptable.
  - b aluminum beverage cans, commingled with ferrous food containers (cans should be clean and dry);
  - c high density polyethylene plastics (HDPE) commingled with polyethylene terephthalate plastics (PET) (beverage containers only; clean and dry with lids removed);

- d clear glass (beverage and food containers only; clean and dry with lids removed);
- e brown glass (beverage and food containers only; clean and dry with lids removed);
- f green glass (beverage and food containers only; clean and dry with lids removed); and
- g any other material agreed to by the Village Manager and Contractor. Recyclable Materials shall not include Prohibited Waste, white office paper, aerosol cans, pharmaceutical glass containers, medical waste containers, pesticide containers or containers originally containing Prohibited Waste.

**1.18 Recycling Container**

Shall mean a single stream recycling container made of durable plastic provided by Contractor for Recycling Materials which shall be "Miami-Dade County blue" and be a wheeled receptacle with a capacity of 60 to 65 gallons, to be manually or mechanically dumped into a loader-packer type recycling truck. Such container shall have overlapping lips for rain protection with a 270 degree lip opening. The handles shall be at least 2"x5" for easy gripping. The carts shall be of at least 0.175" or greater wall thickness with one piece high-density polyethylene (HDPE) construction. The wheels shall be a minimum of 10" and have maintenance-free bearings. The Recycling Container shall be single-stream for both newspaper and other commingled Recyclable Materials. Each recycling container shall be hot-stamped (or a decal may be provided in lieu thereof) with the cart identification number, the Village Seal and any other information as approved by the Village

**1.19 Recycling Services**

Shall mean the collection, separation or processing, and reuse or return to use in the form of raw materials or products of Recyclable Materials.

**1.20 Regular Schedule**

Shall mean the Schedule or any Modified Schedules.

**1.21 Residential Customers**

Shall mean those Single Family and Duplex residences as specified by the Village that are to receive Collection Services. The list of Residential Customers may be amended in accordance with Section 12.3.



- 1.22 Service Area** Shall mean all property located within the Village's corporate boundaries as defined in the Village Charter for which service is provided herein, and as depicted in the Service Map attached hereto as Attachment "C."
- 1.23 Solid Waste** Shall mean and includes Garbage, Yard Trash, Bulk Trash, White Goods or other discarded material resulting from normal housekeeping activities, and shall exclude Prohibited Waste.
- 1.24 Solid Waste Collection Services** Shall mean the collection of Solid Waste for each Residential Customer and Village Government Facilities, and transportation to and disposal in a Solid Waste Disposal Facility.
- 1.25 Solid Waste Disposal Facility** Shall mean any properly permitted and licensed Solid Waste management facility which is the final resting place for Solid Waste, including but not limited to, landfills, transfer stations, and incineration facilities that produce ash from the process of incinerating municipal Solid Waste.
- 1.26 Special Waste** Shall mean Solid Waste that requires special handling and management, including, but not limited to, asbestos, whole tires, used tires, used oil, lead-acid batteries, and Biohazardous Wastes and shall include items that exceed the size limitation for Yard and Bulk Trash.
- 1.27 Tipping Fee** Shall mean the fee per ton charged at a Solid Waste Disposal Facility.
- 1.28 Village** The Village of Key Biscayne, Florida.
- 1.29 Village Government Facilities** Shall mean the Village Civic Center Complex which includes the Village Hall/Police Station, Village Fire Rescue Station, and Village Community Center, and any other facilities owned or operated by the Village or to be built, owned or operated by the Village in the future.
- 1.30 Village Manager** Shall mean the Village Manager of the Village of Key Biscayne, Florida, or his/her designee.

**1.31 White Goods**

Shall mean refrigerators, washing machines, dryers, ranges, and other similar large appliances. Shall not include water heaters and air conditioning units.

**1.32 Yard Trash**

Shall mean vegetative matter resulting from normal yard and landscaping maintenance and shall include materials such as tree and shrub trimmings, grass clippings, palm fronds or small tree branches that shall not exceed four feet in length and four inches in diameter. Yard Trash shall include Christmas Trees regardless of size. Yard Trash shall be bundled or tied. Grass clippings shall be placed in a Garbage Container, disposable bag, or bundled. No bundle, bag, or filled container shall exceed 50 pounds in weight and no more than six containers, bags or bundles per Residential Customer shall be collected at one time.

**2. Initial Term; Renewal Terms**

The initial term of this Agreement shall be for five (5) years ("Initial Term") commencing on October 1, 2015, and terminating on September 30, 2020 ("Termination Date"). The Agreement may be extended or renewed for two (2) additional consecutive renewal terms of two (2) years each, upon the mutual written consent of both parties, upon substantially the same terms as were in effect prior to the extension.

**3. Prerequisites To Commencement of Service.**

**3.1 Pre-Start Route Familiarization**

Contractor shall, at no charge to the Village, perform a pre-start route familiarization program in conjunction with the Village to help route drivers become aware of and familiar with the Pickup Points and with the method by which Collection Services shall be performed.

**3.2 Schedule**

Prior to the commencement of Collection Services, Contractor shall provide the Village Manager with a monthly schedule including the days of the week or month that Garbage, Yard Trash, Recyclable Materials, Bulk Trash and White Goods shall be collected from each Residential Customer and Village Government Facilities within the frequency required by this Agreement ("Schedule"). The parties recognize that existing residential Collection Services in the Village are currently subject to an existing collection schedule. In order to provide seamless services to each Residential Customer, Contractor agrees to utilize the existing collection schedule as the Schedule. The Village Manager shall review and approve the Schedule prior to implementation of any services, and any subsequent requested changes or modifications thereto prior to implementation.

### **3.3 Distribution of Recycling Containers**

Upon commencement of Recycling Services, Contractor shall utilize the existing Village-owned recyclable containers currently used by Village residents. Contractor shall not purchase and distribute new containers to each Residential Customer. However, Contractor shall purchase and furnish Recycling Containers to new households upon request, replace any damaged, lost or stolen containers and provide a second Recycling Container upon residents' request, at no cost to the Village or resident.

Contractor shall develop its recycling routes. The Recycling Container shall be delivered to each residential property within a recycling route. The Contractor shall be responsible for counting the number of residential properties and shall provide to the Village a route map with the residential property count. This information shall serve as the initial count of residential properties in the program. During the distribution of the Recycling Containers, the Village has the option of accompanying the Contractor to verify the Contractor count.

Any new residential property which results from construction or occupancy of a residential property which was unoccupied during initial Recycling Container distribution, or results from expansion of the Village Service Area, shall receive one Recycling Container from Contractor, at the Contractor's cost, and shall be included in the recycling program within seven (7) work days of notice to Contractor by the Village.

Upon delivery of the initial Recycling Container to a residential property, Contractor shall be solely responsible for replacement and distribution of Recycling Containers delivered to residential properties. Upon notification to Contractor by the Village or a Residential Customer that the residential property's Recycling Container has been stolen or that it has been damaged beyond repair, the Contractor shall deliver a replacement Recycling Container to each residential property within seven (7) work days. Each residential property shall be entitled to a one-time replacement of lost, destroyed, or stolen Recycling Containers for any reason, at no cost to the Village or the residential property owner. Thereafter, lost, destroyed or stolen Recycling Containers shall be replaced by the Contractor at no cost to the residential property owner, unless it is determined by the Village Manager and Contractor that the lost, destroyed or stolen Recycling Container was the result of the actions or negligence of the residential property owner. The ownership of the containers purchased and distributed on behalf of the Village by Contractor shall be the property of, and remain with, the Village.

### **3.4 Distribution of Garbage Containers**

On or before commencement of any Solid Waste Services, Contractor shall purchase and distribute, at its sole cost, one Village-approved Garbage Container to each residential property in the Village.

Contractor shall provide to the Village garbage containers for each of the Village Government Facilities, at its sole cost and expense, as directed by the Village.

Contractor shall develop its garbage routes. The Garbage Container shall be delivered to each residential property within a garbage pick-up route. The Contractor shall be responsible for counting the number of residential properties and shall provide to the Village a route map with the residential property count. This information shall serve as the initial count of residential properties in the program. During the distribution of the Garbage Containers, the Village has the option of accompanying the Contractor to verify the Contractor count.

Any new residential property which results from construction or occupancy of a residential property which was unoccupied during initial Garbage Container distribution, or results from the expansion of the Village Service Area, shall receive one Garbage Container from Contractor, at the Contractor's cost, and shall be included in the Garbage program within seven (7) work days of notice to Contractor by the Village.

Upon delivery of the initial Garbage Container to a residential property, Contractor shall be solely responsible for replacement and distribution of Garbage Containers delivered to residential properties. Upon notification to Contractor by the Village or a Residential Customer that the residential property's Garbage Container has been stolen or that it has been damaged beyond repair, the Contractor shall deliver a replacement Garbage Container to each residential property within seven (7) work days. Each residential property shall be entitled to a one-time replacement of lost, destroyed, or stolen Garbage Containers for any reason, at no cost to the Village or the residential property owner. Thereafter, lost, destroyed or stolen Garbage Containers shall be replaced by the Contractor at no cost to the residential property owner, unless it is determined by the Village Manager and Contractor that the lost, destroyed or stolen Garbage Container was the result of the actions or negligence of the residential property owner. The ownership of the containers purchased and distributed on behalf of the Village by Contractor shall be the property of, and remain with, the Village.

#### **4. Commencement of Collection Services**

Collection Services shall commence on October 1, 2015.

#### **5. Collection Services.**

##### **5.1 Collection Services to Residential Customers**

Contractor shall provide sideyard and curbside pickup and disposal services to all Residential Customers within the Service Area for Garbage and Recycling. If Garbage containers and/or Recycling Containers are left sideyard for pick-up, Contractor shall return garbage and recycling containers to the original location. If Garbage Containers and/or Recycling Containers are placed at curbside by Residential Customers, then the Contractor shall place the containers on the residential property as far from the street as reasonably possible to do so but in no event less than five (5) feet from the street. Contractor shall not place the containers on or near the street or blocking a driveway or a walk path at any time.



Contractor shall provide curbside pickup and disposal services to all Residential Customers within the Service Area for Bulk Trash and White Goods. All Bulk Trash and White Goods to be collected shall be placed within six (6) feet of the curb, paved surface of the roadway, closest accessible right-of-way or other such location agreed to by Contractor that shall provide safe and efficient accessibility to Contractor's collection crew and vehicles. For purposes of this Agreement, roadway or right-of-way means a road owned and maintained by the Village, the County or the State of Florida, or a road on private property for which an easement has been granted to the public or the residents in the immediate vicinity. Contractor is also required to make a reasonable effort to restore the area directly underneath where the Bulk Trash was deposited for pickup, including raking that specific area, if necessary.

Yard Trash that is canned or bagged may be placed by Residential Customers either sideyard or curbside for Contractor pickup and disposal. Bundled Yard Trash shall be placed curbside for Contractor pickup and disposal.

Contractor shall provide sideyard and curbside pickup and disposal services for Recycling Materials. The materials shall be deposited by the Residential Customer in the Recycling Container described in Section 3.3 of this Agreement.

Where: (1) A resident is physically unable (as determined by the Village Manager) to deliver Bulk Trash, White Goods, or Recycling Materials to curbside; (2) the residential structure is located in such a manner as to provide non-accessibility to Contractor's crew or vehicle; or (3) clear and safe passage of heavy equipment is prevented as a result of road closings or encumbrances; an alternative location may be arranged between the Residential Customer and Contractor, at no extra cost to the Residential Customer. In the event an appropriate location cannot be agreed upon, the Village Manager shall designate the location.

## **5.2 Regular Collections**

Contractor shall collect, transport, and dispose of all Solid Waste and Recyclable Materials generated by Residential Customers in the Service Area at such frequencies as described below.

### **5.2.1 Garbage**

Contractor shall collect Garbage from each Residential Customer two (2) times per week, with collections at least two (2) days apart pursuant to the approved Schedule ("Garbage Collection Day").

### **5.2.2 Yard Trash**

Contractor shall collect Yard Trash from each Residential Customer one day per week pursuant to the Regular Schedule ("Yard Trash Collection Day").

### **5.2.3 Recyclable Materials**

Contractor shall collect Recyclable Materials from each Residential Customer once per week, on Wednesdays.

### **5.2.4 White Goods**

Contractor shall provide curbside pickup and disposal service of White Goods to each Residential Customer once per month pursuant to the same schedule as Bulk Trash.

### **5.2.5 Bulk Trash**

Bulk Trash shall be picked up curbside on a monthly basis.

### **5.2.6 Services to the Handicapped**

Contractor shall provide, at no additional charge, back-door Collection Services (except for Bulk Trash, White Goods and Bundled Yard Trash) to handicapped persons as determined by and upon the request of the Village Manager.

### **5.2.7 Option of Services to Multi-Family and Commercial Properties**

Although not included within the Scope of Services for this Agreement, if requested by the Village, or multi-family and/or commercial property owners, Contractor shall provide an estimate or quotation for collection, disposal and recycling services for such properties. Collection and recycling services may be provided by Contractor pursuant to a separate agreement with the multi-family or commercial property owner or the Village.

Nothing included herein shall prevent the Village, in the Village's sole discretion, to grant the Contractor the exclusive franchise or right to provide Services to multi-family and commercial properties pursuant to this Agreement, with the pricing to be negotiated between the parties.

## **5.3 Village Collections and Special Events**

Garbage, Solid Waste, and Yard Trash shall be collected from Village Government Facilities, at no additional charge or cost to the Village, three (3) times per week. Recyclable Materials shall be collected from the Village Government Facilities once per week ("Village Collections").

### **Village Special Events**

**4<sup>th</sup> of July Event** - Contractor shall supply the Village with a 40' roll-off container or equivalent for the 4<sup>th</sup> of July Event, at no additional charge or cost, and provide collection and disposal services for Garbage and Recyclable Materials.

**Lighthouse Run Event** - Contractor shall supply the Village with a 10' roll-off container or equivalent for the Lighthouse Run that takes place on the second Saturday in November, at no additional charge or cost, and provide collection and disposal services for Garbage and Recyclable Materials.

**Special Event Receptacles** – Contractor shall supply the Village with three hundred (300) corrugated receptacles, size 18 x 18 x 36" with a 50 gallon capacity at no additional charge or cost.

#### **5.4 Changes to Schedule**

Any requested or proposed changes to the approved Schedule shall require the prior written approval of the Village Manager ("Modified Schedule"). In the event that the Village approves a Modified Schedule, Contractor shall notify each affected Residential Customer at least seven (7) days prior to the effective date of any Modified Schedule, in a newspaper of general circulation in the Village and by direct notification to each Residential Customer. The cost of publication shall be borne solely by Contractor.

#### **5.5 Hours of Collection**

Collection Services performed pursuant to this Agreement shall begin no earlier than 7:00 a.m., and shall be completed no later than 4:00 p.m. Collection shall occur consistent with the approved Schedule and only on Monday, Tuesday, Wednesday, Thursday or Friday. Collection Services shall not take place on Saturday, Sunday or on Holidays (refer to section 6.2). In the case of an emergency or breakdown of Collection Vehicles, Collection Services may be temporarily permitted on Sundays or during times not permitted by this paragraph, provided Contractor has received prior verbal approval from the Village Manager, to be later evidenced by a written memorandum from the Village Manager confirming the approval.

#### **5.6 Protection of Property**

Contractor shall conduct Collection Services in such a manner as to avoid damage to private and public property, including, but not limited to, carts, racks, trees, shrubs, flowers, other landscaping and plants, driveways, pavers and mailboxes, and shall promptly repair or pay for any damage caused by its operations after a reasonable time to investigate such claims (not to exceed ten (10) days). In the event that repairs are not made or damage paid for within ten (10) working days after the damage occurred to the satisfaction of the Village Manager, the Village Manager may authorize and have such repairs made or pay for such damage and deduct the cost from amounts due to Contractor pursuant to this Agreement. Contractor shall provide Collection Services with minimum disturbance to Residential Customers and to the neighborhood.



## **5.7 Spillage**

Contractor shall make every effort to minimize spills or leaks from Collection Vehicles, litter, and spillage occurring on public or private property as a result of Collection Services. In the event of any litter, leaks or spillage caused by Contractor, Contractor shall clean up such spillage within four (4) hours of notice to Contractor from the Village or a Residential Customer. In the event that litter or spillage is not picked up or cleaned up within four (4) hours, the Village may, in its sole discretion, pick up the litter or spillage and deduct such costs for pickup or cleanup from amounts owed Contractor pursuant to this Agreement.

## **6. Other Collections**

### **6.1 Severe Weather/Emergencies**

#### **6.1.1 Emergency Collections/Charges**

In case of severe weather which may create a danger to Contractor's employees or the public, the Village Manager may grant Contractor the right temporarily to vary from the approved Schedule. In the case of severe weather or emergencies where it is necessary for Contractor to acquire additional Collection Vehicles and to hire extra crews to clear the Village of debris resulting from the severe weather ("Emergency Collections"), Contractor shall be required to cooperate with the Village in all possible ways for the efficient and rapid clean-up of the Village. The necessity of Emergency Collections may only be determined upon mutual consent of the Village Manager and Contractor. Such cooperation shall include undertaking steps necessary for an appropriate response to the emergency, including reasonable assistance to the Village at the Village Manager's request for extra collections both before and after the emergency.

Contractor shall receive extra compensation above that set forth in this Agreement for Emergency Collections, provided Contractor has first secured prior written authorization from the Village Manager based on rates jointly agreed to by the Village Manager and Contractor. The Village may contract with other firms or units of government to provide the Emergency Collections. As soon as practical after severe weather or an emergency, Contractor shall advise the Village Manager and Residential Customers of the estimated time required before Regular Schedules can be resumed. At the Village's sole discretion, Contractor may be required to provide emergency services at the rates mutually agreed to by the Village Manager and Contractor.

#### **6.1.2 Hurricane/Disaster Response Plan**

Contractor shall within thirty (30) days of execution of this Agreement submit to the Village a final Hurricane/Disaster Response Plan ("Emergency Plan") detailing variations from the regular services and outlining its responsibilities as well as instructions to Residential Customers. Specifically, the Emergency Plan shall address the following: (1) instructions for Residential Customers; (2) modified pick-up schedules; (3) pruning and trimming of vegetation; (4) bulky

waste; and equipment management. In the case of a hurricane, the Emergency Plan shall cover all phases of the emergency from warning, through the various aspects of public/private response, and ending with the recovery phase of the emergency. The Emergency Plan shall apply not only to hurricanes, but to all severe weather events and events declared emergencies by the Village.

## **6.2 Holidays**

Contractor shall be obligated to provide Collection Services on holidays, except Holidays defined as Independence Day, Thanksgiving Day and Christmas Day. Contractor shall collect Residential Customers affected by these Holidays on the next scheduled collection day.

## **6.3 Special Pickups**

From time to time, the Village or Residential Customers may have the need for Solid Waste pickups, including Garbage, Yard Trash, White Goods, Special Waste, and Bulk Trash, outside of and in addition to the Schedule ("Special Pickups"). Contractor shall provide Special Pickups as requested by the Village or Residential Customer within five (5) working days from the date of the request. Special Pickups requested by a Residential Customer shall be paid directly to the Contractor by the Residential Customer. Prior to making a Special Pickup for a Residential Customer, Contractor shall provide that Residential Customer with a firm written proposal as to the total cost of the Special Pickup. No additional costs beyond those listed in the written proposal may be charged by Contractor. Notwithstanding the provisions of this section, the Village reserves the right to contract with other entities or to provide directly for Special Pickups.

## **7. Contractor's Personnel**

Contractor shall provide, at its own expense, all labor, personnel and supervision necessary to provide the Collection Services as set forth in this Agreement.

### **7.1 Contractor's Officer(s)**

Immediately upon execution of this Agreement, Contractor shall assign a qualified person or persons to supervise and be responsible for Collection Services under this Agreement ("Responsible Person"). The Responsible Person shall be available at all times and the availability of communication between the Village and the Contractor shall be unencumbered seven (7) days a week, 24 hours a day. Contractor shall provide to the Village, in writing, the name, home telephone, pager, and mobile phone numbers of this person or persons. Contractor shall also provide to the Village information regarding the Responsible Person's experience and qualifications.

## **7.2 Assignment of Employees**

Specific Contractor employees shall be assigned to regularly service each Residential Customer. Contractor recognizes that Residential Customers enjoy having employees regularly scheduled to service their homes and shall make every effort to insure consistency in the employees servicing each route.

## **7.3 Conduct of Employees**

Contractor employees shall serve the public in a courteous, helpful, and impartial manner when providing Collection Services pursuant to this Agreement. Contractor's employees shall use available sidewalks or other walkways for pedestrians. Trespassing by employees shall not be permitted. Employees shall not cross the property of one Residential Customer in order to service another Residential Customer unless residents or owners of both such properties have given written permission.

## **7.4 Employee Uniforms**

While providing Collection Services, Contractor employees shall wear a clean uniform including a shirt or overalls bearing the name of Contractor and the employee's first name written in letters at least one inch high, uniform in type. Contractor shall keep a record of employees' names, numbers, and route assignments to allow identification of the employees at all times. Contractor shall provide its then current employee list and route assignments to the Village upon request by the Village Manager.

## **7.5 Residents**

Contractor shall, wherever reasonably practical, recruit and employ its personnel performing services under this Agreement from among residents of the Village.

## **7.6 Equal Opportunity; No Discrimination**

No person shall be denied employment by Contractor for reasons of race, sex, national origin, creed, age, religion or sexual orientation.

## **7.7 Full Time Employees**

All employees assigned to provide Collection Services in the Village shall be full-time or regular part-time Contractor employees and shall not be subcontractors.

## **7.8 Dismissal**

Contractor shall, upon receipt of a request from the Village Manager specifying cause, immediately exclude any employee of Contractor from providing Collection Services pursuant to this Agreement.

## **8. Collection Vehicles and Equipment**

### **8.1 Quality and Quantity**

Contractor shall have on hand at all times and in good working order such Collection Vehicles, equipment, machinery, tools, accessories, and other items necessary to perform Collection Services under this Agreement (collectively "Collection Equipment"). Collection Equipment shall be obtained from nationally known and recognized manufacturers of garbage collection, recycling, and disposal equipment. All Collection Equipment shall be kept in good repair and appearance and in a sanitary and clean condition at all times.

### **8.2 Collection Vehicles, Equipment Description and Replacement**

All Collection Vehicles and other vehicles used by Contractor to provide Collection Services ("Other Vehicles") shall be equipped with state-of-the-art communication equipment capable of providing direct communication with the Village, including, but not limited to portable cellular telephone devices. All Collection Vehicles and Other Vehicles are to be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters not less than five (5) inches high on each side of the vehicle. All Collection Vehicles and Other Vehicles shall be numbered and a record shall be kept as to the utilization of the vehicle to which each number is assigned. Contractor shall provide like new equipment at start-up and shall maintain all equipment in good repair and condition accordance with the equipment's life expectancy. The Village Manager may require the repair or replacement of equipment as reasonably necessary.

### **8.3 Reserve Collection Equipment**

Contractor shall have available reserve Collection Equipment that can be put into service on the same day of any breakdown. Such reserve Collection Equipment shall correspond in size and capacity to the Collection Equipment regularly used by Contractor to perform the Collection Services.

### **8.4 Advertising**

No advertising or messages shall be permitted on Collection Vehicles with the exception of the logo of the Contractor. Any public service signage shall first be approved by the Village.

## **9. Containers**

### **9.1 General**

Solid Waste, including Garbage, Yard Trash, and other non-bulk trash shall be placed in either a Garbage Container or a disposable garbage bag by Residential Customers.



## **9.2 Handling of Containers**

Garbage Containers shall be handled carefully by Contractor, shall not be bent or otherwise abused, and shall be thoroughly emptied and then left upright. Covers on Garbage Containers and lids shall be put securely and properly in place and Garbage Containers returned pursuant to Section 5.1 of this Agreement. In the event of damage caused by Contractor to Garbage Containers, other than normal wear and tear, Contractor shall be responsible for the timely repair or replacement of the Garbage Container within four (4) days of receiving a complaint from the Residential Customer or the Village Manager.

## **9.3 Garbage Containers**

Garbage Containers shall be provided by Contractor in accordance with Section 3.4 of this Agreement.

## **9.4 Recycling Containers**

Recycling Containers shall be provided by Contractor in accordance with Section 3.3 of this Agreement.

## **10. Disposal of Solid Waste**

Contractor hereby represents and warrants to the Village that it shall dispose of the Solid Waste collected pursuant to this Agreement at a Solid Waste Disposal Facility. Contractor shall notify the Village in writing from time to time which Solid Waste Disposal Facility is being used for Solid Waste collected pursuant to this Agreement ("Current Solid Waste Disposal Facility"). Contractor may not utilize a Solid Waste Disposal Facility with a Tipping Fee greater than that currently charged by Miami-Dade County per ton without prior written approval of the Village Manager.

## **11. Compensation to Contractor**

### **11.1 Monthly Residential Fee**

As indicated more specifically on Attachment "A" ("Rate Schedule"), the Village shall pay Contractor the sum of \$44.85 per month per Residential Customer (the "Monthly Residential Fee") as full compensation for the performance of Regularly Scheduled Residential Collection and Disposal Services, including Garbage Collection twice a week, Yard Trash Collection once a week, Recyclable Materials Collection once a week, and Bulk Trash and White Goods Removal monthly pursuant to the Bulk Trash Schedule. This Rate Schedule is based upon 1300 units. The number of Residential Customers may be adjusted quarterly in accordance with Certificates of Occupancy issued for new Residential Customers.

## **11.2 No Fee for Village Collections/Roll-Off Container**

There shall be no compensation paid Contractor for collections from the roll-off containers or from small containers for Village Collections and Special Events as specified in Section 5.3 of this Agreement that are located at Village-owned, occupied or operated property and facilities, including, but not limited to Village Government Facilities.

## **12. Billing**

### **12.1 Residential Billing**

The Village shall be solely responsible for the billing of all Residential Collection Services in order to offset Village's costs hereunder. Contractor shall be responsible for billing of Special Pickups.

### **12.2 Invoices**

Contractor shall submit an invoice to the Village by the 10th of each month for Residential Collection Services rendered during the preceding month. Payments will be made to Contractor by the Village on or before the 20th day of the following calendar month upon verification of the invoice submitted. The total number of Residential Customers served shall be furnished by Contractor to the Village along with each invoice.

### **12.3 Billing Adjustment Procedures**

On the first day of each quarter, the number of Residential Customers may be adjusted by the Village, if necessary, to correspond with Collection Services being provided. The Village Manager will notify Contractor verbally, and will confirm in writing within 15 days of any Residential Customer to which Collection Services should be terminated and of any Residential Customer to which Collection Services should be commenced. Collection Services shall commence or terminate as appropriate at the next regularly scheduled pickup after verbal notification.

### **12.4 Cost of Living Adjustments**

Beginning on October 1, 2016 and annually thereafter, Contractor may petition the Village to adjust the collection and hauling component of the rates to reflect the cost of doing business, measured by the fluctuation in the Consumer Price Index (CPI) (All Urban Consumers, Miami-Fort Lauderdale, Florida) as published by the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency. The Contractor's request shall contain reasonable proof and justification to support the need for the rate adjustment. The Village may request from the Contractor, and the Contractor shall provide, such further information within its possession as may be reasonably necessary in making its determination. The Village shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the Village. The Village shall make a reasonable

determination based upon the documentation provided in reaching its decision. In the event an adjustment is granted, the collection and hauling component shall be adjusted by 100% of the percentage change in the CPI from the previous July to July of the year in which the adjustment is effected (but not to exceed 5% per annum).

## **12.5 Changes in Disposal Charges**

In the event that the disposal charges charged to Contractor at the current Solid Waste Disposal Facility should increase or decrease, the Village Manager, not more frequently than once per Village fiscal year, upon written request from Contractor by October 1<sup>st</sup>, shall adjust the Monthly Residential Fee in accordance with such demonstrated change. The change in Monthly Residential Fee due to disposal adjustments shall not exceed 5% in any calendar year. In order to justify any increase in the Monthly Residential Fees, Contractor shall provide to the Village Manager with the following substantiating evidence:

- a. documentation demonstrating the increase in disposal charges paid for four (4) consecutive months prior to the request for the increase; and
- b. the publication or other evidence announcing the disposal fee increase.

## **12.6 Extraordinary Increases in Cost Adjustment**

The Contractor may petition the Village to adjust Contractor's rates based upon unusual and unanticipated increases in the cost of doing business not caused or occasioned by Contractor, including, but not limited to, a change in law or regulation ("Change in Law"). Any such request shall be supported by full documentation establishing the increase in operating costs and the reasons therefor. The Village shall be entitled to audit the Contractor's financial and operational records directly related to the Contractor's request in order to verify the increase in costs and the reasons therefor.

"Change in Law" means (i) the adoption, promulgation, or modification after the date of this Agreement of any law, regulation, order, statute, ordinance, or rule that was not adopted, promulgated, or modified on or before the date of this Agreement, or (ii) the imposition of any material conditions in connection with the issuance, renewal, or modification of any permit, license, or approval after the date of this Agreement, which in the case of either (i) or (ii) establishes requirements materially affecting the Contractor's operation under this Agreement and more burdensome than the requirements that are applicable to Contractor and in effect as of the date of this Agreement. A change in any federal, State, county, or other tax law or workers compensation law shall not be a Change of Law. However, in the event that a federal, state or local entity imposes a fee, charge or tax after the date of this Agreement that applies to Contractor's operations per se, such fee, charge or tax shall be treated as a Change in Law.

The Contractor's request must be made within one hundred twenty (120) days of the occurrence of such unusual change or cost, and shall contain reasonable proof and justification to support the need for the rate adjustment. The Village may request from the Contractor, and the Contractor shall provide, such further information within its possession as may be reasonably necessary in



making its determination. The Village shall approve or deny the request, in whole or in part, within sixty (60) days of receipt of the request and all other additional information required by the Village. The Village shall make a reasonable determination based upon the documentation provided in reaching its decision.

#### **12.7 Fuel Costs**

There may be an adjustment in the base rate for Contractor should the cost of fuel increase significantly during the term of this Agreement. The base diesel fuel price per gallon for consideration of such a change is \$2.83 per gallon as per the U.S. Energy Information Administration, and should the cost of diesel fuel rise above that base level by more than 10%, upon the written request of the Contractor and substantiating evidence demonstrating a continuous increase in fuel costs over the past four (4) months, the Village shall adjust the base rate of the Contractor. The first potential adjustment may be requested after the first year of the initial Term of this Agreement or on or after October 1, 2016. The actual methodology to be used to determine the amount of the adjustment in the base rate shall be agreed upon by mutual consent of the Village and the Contractor prior to implementation. Under no circumstances shall this increase in the base rate for fuel costs exceed 7% of the amount of the initial base rate for services provided in the initial Term of this Agreement. Additionally, this increase in the base rate for fuel costs shall not be included in the base rate for any renewal terms of this Agreement as provided in Section 2.

#### **13. Ownership of Recyclable Materials**

Contractor shall be the owner of all Recyclable Materials it collects from Residential Customers and may recycle, process or sell the Recyclable Materials, in its discretion. Neither the Village nor the Residential Customers shall be entitled to the proceeds of any sale by Contractor of processed or unprocessed Recyclable Materials.

#### **14. Newsletter**

Contractor shall, at Contractor's sole cost, publish an annual Newsletter with prior Village approval providing Residential Customers with information concerning a wide range of solid waste management topics designed to facilitate collection, transportation and disposal of Solid Waste and Recyclable Materials as well as to produce savings in the performance of Contractor's services.

#### **15. Agreement Performance**

##### **15.1 Supervision by Village Manager**

Contractor's performance of this Agreement shall be supervised by the Village Manager or his designee. If at any time during the Initial Term or any Renewal Term of this Agreement, performance is considered unsatisfactory to the Village Manager or his designee or in breach of this Agreement, Contractor shall immediately take all steps necessary to cure or remedy the

breach and perform this Agreement, including, but not limited to, increasing or improving its work force, tools, and Collection Equipment as needed. The failure of the Village Manager to give such notification shall not be a precondition to the exercise of other rights of the Village under this Agreement nor relieve Contractor of its obligation to perform in the manner specified in this Agreement.

## **15.2 Contractor Performance Disclosure**

Contractor shall furnish the Village Manager any information directly related to this Agreement deemed reasonably necessary by the Village Manager to ascertain whether or not Collection Services are being performed in accordance with the requirements of this Agreement.

## **15.3 Inspection**

The Village Manager or his designee may inspect Contractor's operations and equipment upon reasonable notice to Contractor. Contractor shall permit the Village Manager or his designee to make such inspections at reasonable times and places.

## **16. Complaints and Complaint Resolution/Penalties**

### **16.1 Complaint Line**

Contractor shall maintain a telephone complaint line ("Complaint Line") where complaints can be received from Residential Customers. In the event of a dispute between Contractor and a Residential Customer as to whether an item falls within a particular category of Solid Waste or Prohibited Waste, the situation will be reviewed and resolved by the Village Manager in the reasonable exercise of his/her sole discretion.

### **16.2 Complaint Register**

Contractor shall prepare and maintain, in accordance with a format approved by the Village Manager, a written register of all complaints received, and indicating the disposition of each complaint ("Complaint Register"). The Complaint Register shall be available for inspection by the Village Manager at all times during which the office is open. The Complaint Register shall indicate, at a minimum, the name and address of the complainant, the date and hour on which the complaint was received, the nature of the complaint, the manner in which the complaint was resolved and action taken to remedy the complaint, and the date and hour on which it was resolved. The Complaint Register shall be submitted to the Village Manager each week.

### **16.3 Response to Complaints**

All complaints shall be resolved by Contractor within 24 hours from the time of Contractor's receipt of a complaint from a Residential Customer or receipt of notice from the Village. When a complaint or Village notice is received on the day preceding a Holiday, or on a weekend, it shall be resolved no later than the next working day.

#### **16.4 Disputes**

Unresolved disputes between Contractor and Residential Customers shall be referred to the Village Manager or his designee, whose decision shall be final and binding.

#### **16.5 Penalties**

Contractor shall be assessed penalties by the Village for failure of performance in accordance with the Penalty Schedule attached as Attachment "B", which shall be deducted monthly from payments due Contractor by the Village.

#### **16.6 Monthly Meetings**

Contractor shall have a monthly meeting with the Village to discuss services provided.

#### **17. Annual Reports**

For purposes of this section, Contractor agrees to utilize the Village's fiscal year as the period for annual reporting. On or before December 1st, following each fiscal year, Contractor shall submit to the Village a report ("Annual Report") containing the following information for the previous fiscal year:

- a. Total Solid Waste tonnage collected.
- b. Total Tipping Fees paid to dispose of the Solid Waste.
- c. Gross Billing for all Residential Solid Waste collection, including all Special Pickups, within the Village's Service Area.
- d. Total Recyclable Material collected by category.
- e. Proof that all insurance and bonds required by this Agreement are in effect.
- f. Other information and data as requested by the Village Manager, except information which is properly withheld by Contractor as confidential under Florida law.
- g. Complaint Register.

Contractor shall be assessed penalties for failure to submit the Annual Report on a timely basis, in accordance with the penalty schedule attached as Attachment "B." The amount of the penalties shall be deducted from payments due Contractor by the Village.

**18. Subcontractors**

Contractor shall not employ subcontractors to perform services pursuant to this Agreement without the prior written approval of the Village.

**19. Performance Bond**

On or before ten (10) days prior to commencement of this Agreement, Contractor shall deliver to the Village Manager an executed Performance Bond, in the amount of one (1) year of the total fees to be collected pursuant to this Agreement, as security for the faithful performance of all requirements and obligations and for the payment of all persons performing labor or furnishing materials under this Agreement. The Performance Bond shall be in form and substance acceptable to the Village and Village Attorney and written and signed by a licensed agent of the State of Florida. The attorney-in-fact or other officer who signs a Performance Bond for a surety company, shall file with such bond a certified copy of his/her power-of-attorney authorizing him/her to do so. The address and telephone number of the local representative of the Surety Company furnishing the performance bond shall be inscribed on the certificate furnished to the Village. The Performance Bond shall be accompanied by an affidavit executed by a qualified officer of the company tendering such bond, or by the attorney-in-fact of such company, setting forth the amount of capital and the amount of surplus held by said surety company as of the last published report. The surety company issuing the Performance Bond shall be subject to approval by the Village. Failure to provide the Performance Bond no later than ten (10) days prior to the commencement date of this Agreement or such alternate date as may be acceptable to the Village Manager by written notice, shall be considered an Event of Default. Posting the Performance Bond shall in no way limit or relieve the Contractor of its obligations and liability for damages pursuant to this Agreement. The Performance Bond shall remain in force for one (1) year from the date of actual completion of the Services to protect the Village against losses resulting from latent defects in materials or improper performance of Services under this Agreement. The Performance Bond shall be renewed and adjusted annually to reflect any increases in amounts paid Contractor and in accordance with the CPI increase.

**20. Indemnification**

Contractor shall defend, indemnify and hold the Village, its elected officials, officers, agents, and employees, from and against and assume all liability for any and all claims, suits, actions, damages, liabilities, losses, expenditures, judgments, orders, decrees, attorneys' fees, costs, investigation expenses or causes of actions of any kind (at all trial and appellate levels), arising out of Contractor's performance or nonperformance under this Agreement, and from all actions of Contractor's employees, agents and personnel in the course of carrying out the Services or any business related to the Agreement, including, but not limited to, any claim for bodily injury or property damage to the premises or property of a Residential Customer or of the Village, and occurring on or in connection with the use of public streets or other roads. This indemnification provision shall also apply to claims arising from the Village's negligence, but shall not apply to claims, losses, expenses or liability arising out of the sole negligence or gross negligence of the Village. Further, Contractor shall defend, indemnify and hold harmless the Village and any



Residential Customer from any claim for damages made against Village or Residential Customer as a result of any injury sustained by an employee of Contractor while upon the premises of the Village or Residential Customer, including claims arising from the negligence of the Village or of Residential Customer, but not from claims arising from the intentional wrongful conduct or the sole negligence or gross negligence of the Village or Residential Customer, respectively. This indemnification provision shall survive the termination of this Agreement.

## **21. Insurance**

### **21.1 Insurance Requirements**

Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts not less than those specified herein as satisfactory to Village, naming the Village as an Additional Insured, underwritten by an insurance company rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Village, its officials, employees, agents and volunteers naming the Village as additional insured. Any insurance maintained by the Village shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include at a minimum the amounts set forth in this Section and may be increased by the Village as it deems necessary or prudent.

- (a) Commercial General Liability coverage with limits of liability of not less than a \$5,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Premises and/or Operations, and Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the minimum amount of \$5,000,000 each.
- (b) Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the Contractor shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
- (c) Business Automobile Liability with minimum limits of \$5,000,000 per Occurrence, combined single limit for Bodily Injury and Property Damage. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Service Office, and must include Owned, Hired, and Non-Owned Vehicles.



- (d) Pollution Liability Insurance with minimum limits of Five Million Dollars (\$5,000,000) per Occurrence, to include transportation and vehicles, on and off-site liabilities, clean-up costs, bodily injury and property damage, and disposal sites.
- (e) **Certificate of Insurance.** Certificates of Insurance shall be provided to the Village, reflecting the Village as an Additional Insured, no later than ten (10) days after award of this Agreement and prior to the execution of the Agreement by the Village and prior to commencing any Services. Each certificate shall include no less than (30) thirty-day advance written notice to the Village prior to cancellation, termination, or material alteration of said policies or insurance. The Contractor shall be responsible for assuring that the insurance certificates required by this Section remain in full force and effect for the duration of this Agreement, including any extensions or renewals that may be granted by the Village. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to the Agreement and shall state that such insurance is as required by the Agreement. The Village reserves the right to inspect and return a certified copy of such policies, upon written request by the Village. If a policy is due to expire prior to the completion of the Services, renewal Certificates of Insurance shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Village before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Village.
- (f) **Additional Insured.** The Village is to be specifically included as an Additional Insured for the liability of the Village resulting from Services performed by or on behalf of the Contractor in performance of this Agreement. The Contractor's insurance, including that applicable to the Village as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Village shall be in excess of and shall not contribute to the Contractor's insurance. The Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured (for applicable policies) in the same manner as if separate policies had been issued to each.
- (g) **Deductibles.** All deductibles or self-insured retentions must be declared to and be reasonably approved by the Village. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.
- (h) The provisions of this section shall survive termination of the Agreement.

## **22. Events of Default by Contractor**

Each of the following events or conditions shall constitute an "Event of Default" by Contractor for the purposes of this Agreement:

### **22.1 Failure to comply**

Any failure by Contractor to perform or comply with the terms and conditions of this Agreement.

### **22.2 Insolvency or filings against Contractor**

Filing by or against Contractor or the Performance Bond surety of a bankruptcy, receivership, assignment for the benefit of creditors, liquidation, dissolution, composition or reorganization, petition or other insolvency proceeding.

### **22.3 Failure to provide Collection Service**

Failure by Contractor to provide Collection Services for a period of three (3) consecutive days, excluding Sundays, Holidays, and natural disasters.

### **22.4 Complaints**

Complaints constituting verified deviations from Contractor's duties or obligations under this Agreement in any calendar month in excess of 20 per month.

### **22.5 Unresolved Problems**

Not resolving legitimate complaints of missed service within the time frame specified five (5) or more times in any calendar month.

### **22.6 Misrepresentation**

If any representation or warranty furnished by Contractor in this Agreement is found to be false or misleading in any material respect.

### **22.7 Inspection refusal**

Refusal of Contractor to allow inspection or review of records.

### **22.8 No Annual Report**

Failure to provide the annual report.

## **23. Remedies Upon Default By Contractor**

This Agreement may be terminated by the Village for an Event of Default or if Contractor breaches a material requirement of this Agreement, provided that the Village gives written notice of the breach and ten (10) days for a cure of the breach, except where this Agreement expressly provides otherwise. In such case, the Village may, without recourse to legal process:

- a. Immediately terminate this Agreement by delivery of a written notice of termination to Contractor;
- b. Seek recovery on the Performance Bond;
- c. Exercise all remedies available at law or at equity or other appropriate proceedings, including bringing an action or actions from time to time for recovery of amounts due and owing to the Village, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy, and/or for specific performance.

#### **24. Termination Rights of Village**

In addition to the remedies identified in Section 23, the Village shall have the right to terminate this Agreement, in its sole discretion, for convenience, at any time, by giving thirty (30) days prior written notice to Contractor. In such event, the Village shall pay to the Contractor compensation for Services rendered through the effective date of termination. In no event shall the Village be liable to Contractor for any additional compensation, or for any consequential or incidental expenses, damages, or costs. Contractor recognizes that it shall not have a similar right of termination and acknowledges that other covenants of this Agreement support this provision.

#### **25. Representations and Warranties of Contractor**

Contractor represents and warrants to the Village as follows:

- a. Certain times during the year, the quantity of Solid Waste to be disposed of is materially increased by the influx of visitors. Contractor agrees that seasonal fluctuation shall not be justification for Contractor to fail to maintain the Regular Schedules or to justify a rate increase.
- b. Contractor has visited and inspected the Village Service Areas and become familiar with and is satisfied as to the general and local conditions and site conditions that may affect cost, progress, performance or furnishing of the Services.
- c. Contractor is familiar with and is satisfied as to all federal, state and local laws, regulations and permits that may affect cost, progress, performance and furnishing of the Services. Contractor agrees that it will at all times comply with all requirements of all applicable laws, regulations and permits.

- d. All Solid Waste collected by Contractor under this Agreement shall be disposed of at a duly licensed and permitted Solid Waste Disposal Facility.
- e. Contractor has all requisite power, authority, licenses, permits, and franchises, legal, corporate or otherwise, to execute and deliver and perform its obligations under this Agreement.
- f. Contractor's execution, delivery, and performance of this Agreement has been duly authorized by, or are in accordance with, its organic instruments, this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation of the Contractor.
- g. Contractor's execution, delivery, and performance of this Agreement shall not result in a breach or violation of or constitute a default under any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected.
- h. Contractor has not received any notice, nor to the best of its knowledge is there pending or threatening any notice or any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.
- i. Contractor has, or will have, under its control at the date of commencement of Services under this Agreement, all equipment, machinery, labor, and access to a Solid Waste Disposal Facility necessary to perform under this Agreement.

**26. Compliance with Law**

Contractor shall perform its obligations hereunder in compliance with any and all applicable Federal, State, County and Village laws, rules, and regulations, in accordance with sound safety practices, and in compliance with any and all rules of the Village relative to the Services. Contractor shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder prior to commencement of Collection Services and at all times for the duration of this Agreement.

**27. Taxes, Liens, and Fees**

At all times during the existence of this Agreement, Contractor shall pay on or before the due date all taxes, fees, and assessments which may be levied upon or in connection with the Services provided pursuant to this Agreement, equipment, or its operation, including but not limited to commercial personal property taxes, sales taxes, and intangible taxes, and Contractor shall pay on or before the due date any other charge of any character which may be imposed by any public authority as an incident to title to, ownership or operation of the equipment. In the event that any lien or encumbrance of any nature relating to Contractor's equipment or the



operation or maintenance thereof is filed upon the Village, Contractor shall have 30 days from the date of written notice by the Village to have such lien or encumbrance bonded off or discharged.

## **28. Access to Books and Records**

Contractor shall maintain adequate records of all Solid Waste Collection and Recycling Services. The Village Manager shall have the right to audit, inspect, and review all records, including, but not limited to, the Residential Customer list served pursuant to this Agreement, maintained by Contractor upon 48 hours written notice. On a monthly basis, Contractor shall provide to the Village the previous month's volume of Solid Waste and Recyclable Materials collected under this Agreement. Contractor shall provide a copy of the Annual Report of its parent, which includes Contractor, by March 30 of each year. Such Annual Report shall contain an annual audit of Contractor's books and records by a certified public accountant prepared in accordance with generally accepted accounting principles.

The Village or any of its duly authorized representatives shall, until three (3) years after termination of this Contract, have access to and the right to examine any of the Contractor's books, ledgers, documents, papers, or other records involving transactions related to this Agreement ("Records") for the purpose of making audit, examination, excerpts, and transcriptions. In addition, the Contractor agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. The Contractor agrees to include in any subcontractor contracts corresponding provisions for the benefit of Village providing for retention and audit of records. The right to access and examination of records stated herein and in any subcontracts shall survive termination or expiration of this Agreement and continue until disposition of any mediation, claims, litigation or appeals related to this Project. The Village may cancel and terminate this Agreement immediately for refusal by the Contractor to allow access by the Village Manager or his designee to any Records pertaining to Services performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

## **29. Public Awareness Program**

Contractor annually shall, at its sole cost, assist the Village, within reason, with a Public Awareness Program by distributing door hangers, stickers, flyers, Newsletters or other medium to Residential Customers, as requested by the Village. Additionally, it is Contractor's responsibility to provide information to the Village about those Residential Customers who repeatedly do not prepare or set out their Recyclable Materials or Solid Waste as specified within this Agreement. Contractor shall also distribute to each Residential Customer, within reason, information in a readily available, handy, and convenient form, a Schedule of specific dates for each year of the Term of the Agreement, for Bulk Trash and White Goods collection, including collection sites and other instruction to Residential Customers.

**30. Notices and Changes of Address**

Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the following addresses:

The Village should be addressed as follows:

The Village of Key Biscayne, Florida  
88 West McIntyre Street  
Key Biscayne, Florida 33149  
Attn: Village Manager

With a required copy to:

Stephen J. Helfman, Esq.  
Weiss Serota Helfman Cole & Bierman, P.L.  
2525 Ponce De Leon Boulevard, Suite 700  
Coral Gables, Florida 33134

Contractor should be addressed as follows:

Southern Waste Systems LLC  
790 Hillbrath Drive  
Lantana, Florida 33462  
Attn: Anthony Badala, General Manager

Any party may designate a change of address by written notice to the other party, received by other party at least ten (10) days before the change of address is to become effective.

**31. No Waiver**

The failure of Contractor or the Village to insist upon the strict performance of the terms and conditions of this Agreement shall not constitute or be construed as a waiver or relinquishment of either party's rights to thereafter enforce their rights in accordance with this Agreement in the event of a continuing or subsequent default on the part of Contractor or the Village.

**32. Severability**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

**33. Binding Effect**

This Agreement shall be binding upon the parties hereto, their heirs, administrators, successors, and assigns.

**34. Assignment**

Contractor shall not assign, sell, transfer or dispose of the rights or obligations of this Agreement in any manner whatsoever without the express prior written consent of the Village. The Village shall have full discretion to approve or deny, with or without cause, any proposed sale, transfer or assignment by Contractor. Any assignment, sale or transfer of this Agreement made by Contractor without the express written consent of the Village shall be an Event of Default of this Agreement and cause for immediate termination of this Agreement by the Village upon written notice to Contractor. This Agreement shall be deemed immediately terminated as of the date of such notice, and, upon such termination, all liability of the Village under this Agreement to Contractor shall cease, and the Village shall have the right to call the Performance Bond and shall be free to negotiate with any other person or company for Collection Services in the Service Area which is the subject of this Agreement. In the event the Village agrees to an assignment, sale or transfer of the rights or obligations of this Agreement, the assignee shall fully assume all the liabilities and obligations of Contractor under this Agreement.

**35. Complete Agreement**

This Agreement along with the Village of Key Biscayne Solid Waste RFP which selected Contractor, and the proposal submitted by Contractor in response to the RFP, when executed, together with the Attachments, as provided for in this Agreement, shall constitute the entire Agreement between both parties and this Agreement may not be amended, modified or terminated except by writing signed by both parties. Where those terms of the Agreement, the Solid Waste RFP and the proposal submitted by the Contractor conflict, the terms of this Agreement shall prevail. When the terms of the proposal and the RFP conflict, the terms of the proposal shall prevail. The Village Manager is authorized to act on behalf of the Village hereunder.

**36. Independent Parties**

Nothing contained in this Agreement shall be deemed or construed for any purpose to establish, between Village and Contractor, a partnership or joint venture, a principal-agent relationship or any relationship other than an independent contractor.

**37. Force Majeure**

The performance of any act by the Village or Contractor hereunder may be delayed or suspended at any time while, but only so long as, either party is hindered in or prevented from performance by acts of God, the elements, war, rebellion, strikes, lockouts or any other cause beyond the reasonable control of such party, provided however that the Village shall have the right to

provide substitute services from third party contractors or Village forces and in such event the Village shall withhold payment due Contractor for such period of time. If the condition of force majeure exceeds a period of seven (7) days, the Village may, at its sole option and discretion, terminate or renegotiate this Agreement.

**38. Time of the Essence**

Time is of the essence with respect to each and every term and condition of this Agreement, and the performance of all Services required pursuant to this Agreement.

**39. Amendment**

The parties hereby irrevocably agree that no attempted amendment, modification, discharge or change of this Agreement shall be valid and effective, unless both parties shall agree in writing to such amendment.

**40. Attorneys Fees; Prevailing Party**

In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

**41. Gender and Use of Singular and Plural**

All pronouns shall be deemed to refer to the masculine, feminine, neuter, singular or plural, as the identity of the party or parties, or their personal representatives, successors, and assigns may require.

**42. Counterparts**

This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**43. Headings**

The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

**44. Governing Law/Waiver of Jury Trial**

This Agreement shall be construed in accordance with the laws of the State of Florida and any proceeding arising between the parties in any manner pertaining to or related to this Agreement shall, to the extent permitted by law, be held in Miami-Dade County, Florida. Each party hereby knowingly, voluntarily and intentionally waives any right they may have to a trial by jury in



respect of any litigation based upon the Agreement or arising out of, under or in connection with any other agreement contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party. This provision is a material inducement for the parties entering into this Agreement.

**IN WITNESS WHEREOF**, and intending to be legally bound, the parties hereto execute and subscribe their names to this instrument on the date first above written.


VILLAGE:

THE VILLAGE OF KEY BISCAYNE, a  
Florida municipal corporation

By:   
John C. Gilbert, Village Manager

Date Executed: \_\_\_\_\_

ATTEST:

  
Conchita H. Alvarez, MMC, Village Clerk


Approved as to Form and Legal Sufficiency:

  
Village Attorney



Witnesses:

  
Print Name: John Casagrande

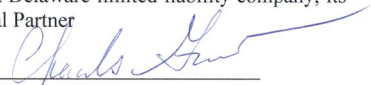
  
Print Name: Amy Plucinski

CONTRACTOR:

SOUTHERN WASTE SYSTEMS, LLC, a  
Florida limited liability company

By: Southern Waste Systems Holdings, L.P., a  
Delaware limited partnership, its Manager

By: Southern Waste Holdings Management,  
LLC, a Delaware limited liability company, its  
General Partner

By:   
Name: Charles Gusmano  
Title: Manager

## **ATTACHMENT "A"**

### **RATE SCHEDULE**

#### **RESIDENTIAL:**

Garbage (twice/week)  
Yard Trash (once/week)  
Recyclable Materials (once/week)  
Bulk Trash and White Goods (monthly)

Number of Residential Customers: 1,300

Price per Residential Customer: \$44.85

Total Per Month/Annual	\$44.85/month	\$538.20/year
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One Time Fee per Household	
Per Garbage Container	\$75.00

#### **General Considerations**

All of the above prices include collection, disposal, transportation, permits, and licenses required for providing Collection Services to and for the Village.



## ATTACHMENT "B"

### PENALTY SCHEDULE

VIOLATIONS		PENALTY
a.	Failure to collect missed Residential Customers by 8:00 p.m. the same day when given notice before noon, or by 12:00 p.m. the following day when given notice between 12:00 p.m. and 5:00 p.m.	\$25.00 per incident to maximum of \$150.00 per truck per day
b.	Over twelve (12) legitimate complaints per month	\$100.00 per incident
c.	Collection of Residential Solid Waste, Recyclables and/or Bulk Trash before 7:00 a.m. or after 4:00 p.m.	\$100.00 per incident
d.	Failure to clean spillage	\$100.00 per incident
e.	Failure to return containers consistent with terms of the Agreement.	\$100.00 per incident
f.	Failure to repair damage to Residential Customer property.	\$100.00 per incident
g.	Failure to provide documents and reports in a timely manner.	\$100.00 per incident
h.	Failure to provide clean, safe, and sanitary equipment.	\$100.00 per incident
i.	Not providing schedule and route map	\$100.00 per incident
j.	Failure to complete a route on the regular scheduled pick-up day.	\$5,000.00 for each route per day not completed
k.	Failure to finish the uncompleted route(s) of the previous day on the next calendar day.	\$1,500 for each failure to complete.
l.	Failure to collect on a holiday, except Thanksgiving Day, Christmas and Independence Day	\$5,000.00 for each failure
m.	Leaving trucks or equipment overnight in Village	\$5,000.00 for each incident

ATTACHMENT "C"

VILLAGE SERVICE AREA MAP

